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THE case of United States *v.* The Trans-Missouri Freight Association, lately decided by the United States Supreme Court, is peculiarly interesting as emphasizing the importance of certainty of expression in the statute law, and as defining the relative duties of our courts and legislatures. The heart of the dispute seems to be the interests of the public, and involved in those interests we find freedom of individual trade and freedom of individual contract. Both should be preserved, and yet each seems to be in apparent conflict with the other. In one sense at least contracts of trade are contracts in restraint of trade and the difficulty lies in determining where the line shall be drawn. At early common law the question was debated, how far individuals might contract their freedom of trade away; now the debate has developed into one concerning the power of corporations to restrict the free exercise of their right to contract. The change in the complexion of the question denotes merely a change of society and social development. It was once asked what interest a tradesman in London could have in what another might do in Newcastle. The answer was given by a later period of society, when commerce and trade were more highly organized and developed. It is now asked what concern it may be of the public whether its business is conducted by a few large corporations or by many unorganized individuals.

The common law has been developed until now all contracts in unreasonable restraint of trade are held to be void and this has been accepted as the true doctrine both in England and in this country. But the Act of Congress, passed in 1890, and commonly known as the Anti-Trust Law, has in terms changed the common law rule and has prohibited all contracts in restraint of trade, whether those contracts be reasonable or unreasonable or whether

the restraint be great or slight. The construction of this law by the courts became necessary and the intention of those who passed it became relevant. It was found, however, that the intention was expressed in legal terms and while by some it was claimed that these terms should be given their legal significance, by others a doubt was entertained whether the legal significance was generally understood, and even if understood and intended by the Judiciary Committee, whether the intention of that committee might be taken as the intention of the House and Senate collectively. On the one hand it is said that law makers must be presumed to have intended to make a law which would be reasonable and would have reasonable results, and the dissenting opinion in the case above cited, after tracing the history of the meaning of the words, "restraint of trade," concludes that technically and legally they are now equivalent to the words, "unreasonable restraint of trade." On the other hand it is contended that the duty of a court is not to make laws or even to amend them, and if the use of reasonable means of interpretation does not render the spirit of the law certain, that then its letter should be followed. In the one case the consideration of results predominates, in the other the consideration of the means to be employed. Indeed if you adopt the principle that words which have a technical as well as a popular meaning should be construed to have that meaning which under the circumstances it can be presumed that they were intended to have, you are even then brought face to face with the circumstances surrounding the passage of the law, and the evident uncertainty of the legislative mind, equalled only by the uncertainty of its expression, renders certainty impossible.

The difference seems apparently to be one of legal technicality, and to be open to different views. The proximate cause of the difficulty, however, should not be attributed to an abstruseness of legal science or to an exaggerated acuteness of the legal profession. The real cause presents an uncertain intention quite as much as an uncertain expression and the responsibility for this uncertainty rests with the legislative and not with the judicial department of our government. The duty of law making is entrusted to Congress; the duty of law interpreting is left to the Supreme Court. But a law must exist before it may be interpreted and there must be an intention before one may be found. The tendency on the part of legislatures to throw upon our courts the duty of legislation as well as interpretation is singularly illustrated in this Anti-Trust Law. Disagreeing among themselves our Representatives seem to have depended

upon the Supreme Court not only to refrain from reading the rule of reason out of the statute but in effect to read into it a rule of reason which was not there before. Instead of clearing up the doubt as to their intention the Legislature cast this imperfect foundling upon the country and expected the Supreme Court to father and bring it up in the way that it should go. That court, however, was established for no such purpose, and should cease to be regarded as the unwilling guardian of laws which are disowned by those who are responsible for their creation. It may be true that our Judiciary is better fitted than our more immediate Representatives to legislate for the best interests of the country, but to admit this is to admit the failure of the Republican form of Government.

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THE thought occurs, however, that the embarrassment from which we seem now to be suffering may not wholly be due to uncertainty of intention or even of expression but to the uncertainty inherent in the subject itself. The difference of opinion found in our Supreme Court is not confined to that body or to the Legislature. The whole country, if not the world, shares in their disagreement, and the question seems to be one which no statute of Congress or no decree of court may finally determine. The position of corporations and trusts in the society of to-day is as strongly advocated by some as denounced by others and the variation of opinion seems sometimes at least to be partly due to the varied character of conditions. The cause of the difficulty seems to be economic development and the settlement should be brought about by economic forces. Questions of similar importance have come up before, have met with similar treatment and their determination by the Supreme Court has been received with equal dissatisfaction by a large portion of the public. The Dred Scott decision might be cited for one and the more recent Income Tax decision for another. No question of economics was definitely settled by either of those decisions, nor was their indefiniteness due to the disagreement of the court or to the closeness of the vote which determined them. The questions to be decided were not those to which legal principles might conclusively be applied, for the questions themselves were economic and involved principles of a higher order. The question lately submitted to the Supreme Court may be of a similar character and require submission to the jury of economic development before a definite and final result may be obtained.

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THERE seems to be a growing tendency on the part of law-

makers throughout the country to legislate unfavorably to combinations of capital of every kind. This tendency has been especially noticeable in the West, as would naturally be expected from the local growth of populistic ideas, but it is by no means confined to that locality, and a striking instance of such legislation has recently occurred in Connecticut. The fire insurance companies of the State have been greatly concerned over the passage, by the lower House of the Legislature, of a bill prohibiting combinations of fire-insurance companies to establish rates. Two things are worthy of remark in connection with this measure, (1) that it is the first attempt at legislation against combinations of the kind in the history of the State, which has been prominent in the insurance business for so many years, and (2) that the bill was passed over the unanimously unfavorable report of the Insurance Committee. At the time of going to press the Senate had not considered the measure, but there was said to be a strong sentiment in that body favorable to its becoming a law.

Those who speak with authority on the subject of insurance are strong in the opinion that the effect of the bill would be to disorganize the insurance business, and that it would not only close out the smaller companies but would seriously injure the larger ones by subjecting them to disastrous competition by outside companies not affected by the law. Attention is called to the fact that the interests of the insurance companies are those of the insured and that whatever interferes with the prosperity of the companies lessens the value of the protection that they offer. There is apparently no complaint of unreasonable rates; they are said to be lower than those of almost any other State, and lower than a year ago; and it would seem to be unwise for Connecticut to discourage those who have developed the insurance business of the State into a science and whose experience enables them to conduct it for the best interests of all concerned. Whatever the final outcome, the success of the bill in the House of Representatives is a forcible example of what European writers have remarked as so characteristic of America and of American legislation in particular—the tendency to go to extremes, and at times, regardless of consequences, to carry matters beyond their logical conclusion. There is now much complaint against the great corporations and against combinations of wealth generally; therefore the idea of the lawmakers seems to be to legislate against them all, without distinction in favor of those with whose welfare that of the public is so closely connected.